

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the present amendment and in light of the following discussion, is respectfully requested.

Claims 1-19 are pending. In the present amendment, Claims 1 and 11 are currently amended and new Claims 14-19 are added. Support for the present amendment can be found in the present specification, for example, at page 9, line 21 to page 10, line 3, in Figure 1, and in original Claims 1, 4, 5, and 8-11. Thus, it is respectfully submitted that no new matter is added.

In the outstanding Office Action, Claim 4 was rejected under 35 U.S.C. § 112, second paragraph; Claims 1, 2, 6, and 7 were rejected under 35 U.S.C. § 102(b) as anticipated by Shaw et al. (U.S. Patent No. 3,112,005, hereinafter “Shaw”); Claims 3, 4, and 10-13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Shaw; and Claims 5, 8, and 9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Shaw in view of Bargo (U.S. Patent No. 7,311,957).

With respect to the rejection under 35 U.S.C. § 112, second paragraph, the phrase “said air-permeable porous material” in Claim 4 finds antecedent basis in Claim 11. Thus, it is believed that all pending claims are definite and no further rejections on that basis are anticipated. However, if the Examiner disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually acceptable language.

Turning now to the rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a), Applicant respectfully requests reconsideration of these rejections and traverses these rejections, as discussed below.

Claims 1 and 11 recite, in part, that the baffle portion and the back housing portion, respectively, are “formed of an air-permeable porous material.” According to the original

specification at page 9, line 21 to page 10, line 3, the back housing and baffle portion of the headphone apparatus are made of an air-permeable porous material, which allows sound entering the headphone apparatus from the outside to permeate into a space between the baffle board and the back housing where the driver unit is housed, and thus the sound from the outside can be prevented from being dark noise and clear sound which is not muffled can be emitted by the headphone apparatus. It is respectfully submitted that the cited reference does not disclose or suggest every feature recited in amended Claim 1.

In Shaw, a driver unit 6 is rigidly attached to a cup 1 and a “porous sound absorbing material completely fills the region of the cup surrounding the back part of the driver unit 6.”<sup>1</sup> The porous sound absorbing material forms a conical-shaped outer surface 63 (cited in the Office Action as corresponding to the claimed baffle portion) around the driver unit 6. Shaw states that “the resistance to air flow present by the porous material 60 renders frequency dependent the portion of the acoustic cavity which is included in the effective earphone coupling volume with the result that the latter decreases with increasing frequency.”<sup>2</sup>

However, it is respectfully submitted that Shaw does not disclose or suggest “an air-permeable porous material,” as recited in amended Claim 1.

Instead, Shaw teaches away from the claimed headphone apparatus because the porous material 60 of Shaw has a “resistance to air flow.” Thus, it is respectfully submitted that the official notice taken on page 5 of the Office Action that a sound-permeable material would necessarily be air-permeable is contradicted by Shaw. Additionally, for example, a solid wood wall could be sound-permeable and made of a porous material without being air-permeable. Thus, the fact that a sound-permeable, porous material would require the material to be air-permeable is not believed to be common knowledge or well-known in the art.

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<sup>1</sup> See Shaw, at col. 13, lines 5-9.

<sup>2</sup> See Shaw, at col. 13, lines 15-19.

Accordingly, it is respectfully requested that if this position is to be maintained, the next Office Action provide evidence in support of the official notice taken with respect to Claim 11.

Further, it is respectfully submitted that the material 60 of Shaw is described as “sound absorbing,”<sup>3</sup> and thus cannot also be sound permeable, as stated on page 5 of the Office Action. As such, Shaw states that the “frequency dependent sound permeability means comprises a partition, including the driver unit, disposed in the cup.”<sup>4</sup>

Thus, it is respectfully submitted that the cited reference does not disclose or suggest every feature recited in Claims 1 and 11. Accordingly, it is respectfully requested that the rejections of Claim 1 and 11, and all claims dependent thereon, as anticipated by or unpatentable over Shaw be withdrawn.

Regarding the rejection of Claims 5, 8, and 9 as unpatentable over Shaw in view of Bargo, it is noted that Claims 5, 8, and 9 are dependent on Claim 11, and thus are believed to be patentable for at least the reasons discussed above with respect to Claim 11.

Further, it is respectfully submitted that Bargo does not cure any of the above-noted deficiencies of Shaw. Applicant also respectfully disagrees with and traverses the official notice taken by the Examiner in paragraphs 20 and 21 on page 7 of the Office Action that the adhesive layer of Bargo is air permeable. Bargo describes a sound absorbing material 10 including a mix of fibers 12, 14. A face cloth 20 may be applied to the outer surfaces of the material 10.

However, Bargo does not disclose or suggest that the material 10 is air-permeable with or without the face cloth 20, and also teaches away from the material 10 being air-permeable. Bargo describes the need for the material 10 to “pass the flame tests of

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<sup>3</sup> See Shaw, at col. 13, lines 12-16.

<sup>4</sup> See Shaw, at col. 5, lines 19-21.

automobile manufacturers.”<sup>5</sup> Thus, it is respectfully submitted that an air-permeable material would be likelier to fail a flame test because such a material would allow flames and smoke to pass through. Additionally, Fig. 3 of Bargo shows the face cloth 20 applied to the material 10. As seen in Fig. 3 of Bargo, the composite layers including material 10 and face cloth 20 shows a structure without any holes to suggest air permeability. Accordingly, it is respectfully submitted that Claims 5, 8, and 9 are patentable over Shaw in view of Bargo.

New Claims 14-19 are added by the present amendment. Support for new Claims 14-19 can be found in the original specification, for example, in Figure 1, and in original Claims 1, 4, 5, and 8-11. Thus, it is respectfully submitted that no new matter is added. New Claims 14-18 depend on Claims 1 and 11. Thus, it is respectfully submitted that new Claims 14-18 patentably define over the cited references for at least the reasons stated above with respect to Claims 1 and 11.

New independent Claim 19 recites, in part, that “the back housing portion is formed of an air-permeable porous material, and the back housing portion is an outer surface of the headphone apparatus.” The Office Action on page 4 asserts that the claimed back housing portion is disclosed by elements 1 and 11 of Shaw. However, Shaw describes the rigid cup 1 forming the outer surface of the headphone apparatus as being “non-porous.”<sup>6</sup> Accordingly, it is respectfully requested that new Claim 19 be allowed.

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<sup>5</sup> See Bargo, at col. 1, lines 51-55.

<sup>6</sup> See Shaw, at col. 7, lines 34-36.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. A Notice of Allowance is earnestly solicited.

Respectfully submitted,

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